

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
FURUKAWA ELECTRIC)	
NORTH AMERICA, INC.; OFS FITEL LLC,)	
)	
Plaintiffs,)	
)	Civil Action No. 05-11665 RGS
vs.)	
)	
)	
ANTARES DEVELOPMENT)	
INTERNATIONAL LLC,)	
)	
Defendant.)	
_____)	

MOTION FOR CLARIFICATION OF COURT’S SEPTEMBER 29, 2005 ORDER

Plaintiffs Furukawa Electric North America, Inc. and OFS Fitel LLC (collectively, “OFS”) hereby request clarification of the Court’s Order on Defendant Antares Development International LLC’s (“Antares”) Motion to Stay Proceedings, or In the Alternative, to Extend Time To Answer Complaint (the “Motion to Stay”), which was entered on September 29, 2005.

On June 10, 2005, OFS filed a patent infringement suit against Yangtze Optical Fibre and Cable Company Ltd. (“YOFC”) alleging that YOFC has infringed and is infringing certain of OFS’ patents through its use, offer for sale and sale of fiber optic products in the United States. *See Furukawa Electric Company of North America, et al. v. Yangtze Optical Fibre and Cable Company Ltd.*, civil action no. 05-11219-RGS (“YOFC Case”). OFS served the Summons and Complaint in the YOFC Case on the president of Antares, Crawford Cutts (YOFC’s exclusive agent in North America). YOFC filed a Motion to Dismiss, alleging that service on Mr. Cutts

was insufficient as to YOFC. OFS opposed that motion and oral argument is scheduled for November 9, 2005.

On August 11, 2005, OFS filed this patent infringement suit against Antares, alleging that Antares infringes certain of OFS' patents by selling and/or offering for sale YOFC's infringing products in the United States. Antares' answer was due on September 1, 2005. Instead of answering, Antares filed a Motion to Stay seeking: (1) a stay of this case pending the outcome of a patent case involving a different defendant, *Furukawa Electric North America, Inc. v. Sterlite Optical Technologies, Inc., et al.*, civil action no. 1:02-CV-2149 CAP, currently pending in the Northern District of Georgia (the "Georgia Action");¹ *or in the alternative*, (2) that the briefing schedule in the Antares case be modified such that it would proceed on the same track as the YOFC matter. *See* Motion to Stay, p. 3. No trial date has been set in the Georgia Action and it could be years before that matter is litigated to conclusion. The Georgia Action does not involve the same patents asserted in this case, as U.S. Patent No. 4,820,322 (the "'322 patent") is not at issue in the Georgia Action. A stay of this action in favor of the Georgia Action would, therefore, prevent OFS from enforcing its rights with respect to the '322 patent - even though that patent is in no way effected by the Georgia Action. Moreover, OFS will be significantly prejudiced should it be forced to endure Antares' infringement of its patents during the indefinite period that the Georgia Action may take to be resolved.

On September 29, 2005, the Court issued a one line order granting Antares' Motion. It is not clear from the Order whether the Court intended to stay the action pending the outcome of the Georgia Action or whether the Court intended to extend the time for Antares to answer the Complaint until after a decision on YOFC's Motion to Dismiss and thereby place the YOFC and Antares Cases on the same track.

¹ Antares' motion mis-identifies the case caption as *Fitel USA Corp. v. Fibercore, Inc.*

Preparation of this case could be significantly impacted depending on which of the two options the Court has adopted.

CONCLUSION

For the reasons set forth herein, OFS respectfully requests that the Court clarify its Order of September 29, 2005.

Dated: October 14, 2005

Respectfully submitted,

By: /s/ E. Page Wilkins

Sarah Chapin Columbia (BBO# 550155)

Carlos Perez-Albuerne (BBO# 640446)

E. Page Wilkins (BBO# 654535)

CHOATE, HALL & STEWART

Two International Place

Boston, Massachusetts 02110

(617) 248-5000

3994932v1